IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.1474 OF 2005
IN
WRIT PETITION NO. 2735 OF 2004

Pradip Ramniklal Bhatt ...Applicant
Vs.
Bank of Baroda & Ors. ...Respondents

Mr.S.R.Nargolkar for Petitioner
Mr.S.N. Satpute for Respondent No.1
Mr.Pankaj Kansara for Respondent Nos.2 & 3

CORAM: H.L.GOKHALE &
S.P.KUKDAY,JJ.
DATED: 22ND JUNE, 2005

P.C.

1. Heard Mr.Nargolkar in support of this Application. Mr. Satpute appears for Respondent No.1. Mr. Kansara appears for Respondent Nos.2 and 3. Respondent No.4 is a formal Respondent. The Civil Application prays that Writ Petition No.2735 of 2004 be restored to the file and the interim order passed on 19th March, 2004 be continued.

2. It has so happened that on 19th March,2004 a Division Bench of this Court ordered a notice on the Writ Petition making it returnable on 1st April 2004. It also granted an interim order, namely that the auction of the premises occupied by the Applicant herein was not to be held. The order was a self operative order and it is stated that the Petitioner has to file an affidavit that the service is effected failing which it will stand dismissed against the unserved Respondent.

3. Mr.Nargolkar points out that the service was effected. Respondent No.1 have engaged their Advocate who has filed their appearance in the main Petition. Mr.Kansara appearing for Respondent Nos.2 and 3 does not dispute that service is effected on his clients. This being the position it appears that there was an error on the part of the office in coming to the conclusion that since affidavit is not filed, service is not effected and therefore, the Petition will stand dismissed for non prosecution. Mr.Nargolkar accepts that the only mistake of the Petitioner was that the affidavit of service was not filed. He therefore, prays that the main Writ Petition be restored.

4. Mr.Satpute appearing for Respondent NO.1 has opposed restoration of the Petition. He has submitted that the main Petition itself should not be entertained in as much as the Petitioner has alternative remedies. In our view that is the submission which will be gone into when the Petition is heard. Right now we are concerned with the restoration of the Petition. We accept the explanation of Mr.Nargolkar that there was an error in not filing the affidavit. The fact however remains that the Respondents were served. The remark of the Office that the service was not effected was not called for and therefore, the order of dismissal will have to be interfered.

5. Accordingly we allow the Civil Application. The delay in filing the Civil Application is condoned. Writ Petition is restored to the file and the order of

dismissal for non-prosecution is set aside. The interim order will also stand restored and the Respondent Bank will not proceed with the auction.

6. Mr.Satpute makes a request that the Petition be listed for admission at the earliest. Mr.Nargolkar has no objection.

7. Main Petition be listed for admission on 27th June, 2005.

8. Civil Application allowed in the above terms.

9. Authenticated copy of this order be made available to the parties.

(H.L.GOKHALE,J.)

(S.P.KUKDAY,J.)